

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
<b>PLAINTIFF</b> USA Commercial Mortgage Company		<b>DEFENDANT</b> Salvatore Reale	
ATTORNEYS (Firm Name, Address, and Telephone No.) Lenard E. Schwartzer, Esq. Jeanette E. McPherson, Esq. Schwartz & McPherson Law Firm 2850 South Jones Blvd., Suite 1 Las Vegas NV 89146 (702) 228-7590		ATTORNEYS (If Known)	
<b>PARTY</b> (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY			
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) 11 U.S.C. §544, 548 and §550 NRS 112.180			
<b>NATURE OF SUIT</b> (Check the one most appropriate box only.)			
<input checked="" type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 498 Other (specify) <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727 <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan			
<b>ORIGIN OF PROCEEDINGS</b> (Check one box only.)		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court			
<b>DEMAND</b>	NEAREST THOUSAND \$4,000,000.00	OTHER RELIEF SOUGHT	<input type="checkbox"/> JURY DEMAND
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>			
NAME OF DEBTOR USA Commercial Mortgage Company USA Capital Realty Advisors, LLC USA Capital Diversified Trust Deed Fund, LLC USA First Trust Deed Fund, LLC USA Securities, LLC		BANKRUPTCY CASE NO. BK-S-06-10725 LBR BK-S-06-10726 LBR BK-S-06-10727 LBR BK-S-06-10728 LBR BK-S-06-10729 LBR Jointly Administered Under Case No. BK-S-06-10725 LBR	
DISTRICT IN WHICH CASE IS PENDING NEVADA		DIVISIONAL OFFICE LAS VEGAS	NAME OF JUDGE HONORABLE LINDA B. RIEGLE
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>			
PLAINTIFF		DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT		DIVISIONAL OFFICE	NAME OF JUDGE
<b>FILING FEE</b> (Check one box only.) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED			
DATE 12/18/2006	PRINT NAME Jeanette E. McPherson, Esq.	SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Jeanette E. McPherson	

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Annette W. Jarvis, Utah Bar No. 1649

Steven C. Strong, Utah Bar No. 6340

RAY QUINNEY &amp; NEBEKER P.C.

36 South State Street, Suite 1400

P.O. Box 45385

Salt Lake City, Utah 84145-0385

Telephone: (801) 532-1500

Facsimile: (801) 532-7543

Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

-and-

Lenard E. Schwartz, Nevada Bar No. 0399

Jeanette E. McPherson, Nevada Bar No. 5423

Jason Imes, Nevada Bar No.

SCHWARTZER &amp; MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-5308

Telephone: (702) 228-7590

Facsimile: (702) 892-0122

E-Mail: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

Attorneys for Plaintiff, USA Commercial Mortgage Company

**UNITED STATES BANKRUPTCY COURT****DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,

Debtor.

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:

USA SECURITIES, LLC,

Debtor.

Affects:

☐ All Debtors☒ USA Commercial Mortgage Company☐ USA Securities, LLC☐ USA Capital Realty Advisors, LLC☐ USA Capital Diversified Trust Deed Fund, LLC☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR

Case No. BK-S-06-10726 LBR

Case No. BK-S-06-10727 LBR

Case No. BK-S-06-10728 LBR

Case No. BK-S-06-10729 LBR

Chapter 11

**Jointly Administered Under  
Case No. BK-S-06-10725 LBR****Adversary No. 06-****COMPLAINT UNDER 11 U.S.C. §§  
544, 548, AND 550 AND NRS 112.180**

SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Tel: (702) 228-7590 · Fax: (702) 892-0122

USA COMMERCIAL MORTGAGE COMPANY,  
  
Plaintiff,  
  
vs.  
  
SALVATORE REALE,  
  
Defendant.

Plaintiff, USA Commercial Mortgage Company ("USACM"), hereby complains as follows:

### JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157 and 11 U.S.C. §§ 544, 548, and 550, and NRS 112.180.
2. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).
3. This is an adversary proceeding pursuant to Fed.R.Bankr.P. 7001.
4. This court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).

### GENERAL ALLEGATIONS

5. On March 8, 2006, USACM transferred the sum of Six Million Dollars (\$6,000,000.00) to the bank account of USA Investment Partners LLC ("Investment Partners").
6. The transfer of the \$6,000,000.00 to the Investment Partners' bank account caused the Investment Partners' bank account to increase from \$39,944.12 to \$6,039,944.12.
7. On March 13, 2006, USACM transferred the sum of Two Million Eight Hundred Thousand Dollars (\$2,800,000.00) to the bank account of Investment Partners.
8. After the deposit of the \$2,800,000 into the bank account for Investment Partners on March 13, 2006, the Investment Partners' bank account was in the amount of \$6,475,151.45.
9. On March 13, 2006, Investment Partners transferred the sum of Four Million Dollars (\$4,000,000.00) (the "Transfer") from its bank account to Salvatore Reale ("Reale").
10. Upon information and belief, the Transfer was made for payment on a promissory note executed solely by Joseph D. Milanowski ("Milanowski") and Tom Hantges ("Hantges") in

1 favor of Reale (the "Reale Note").

2 11. Investment Partners is a limited liability company that is owned and controlled by  
3 Milanowski and Hantges (or family trusts controlled by them).

4 12. Upon information and belief, at all relevant times, USACM has been a creditor of  
5 Investment Partners.

6 13. Upon information and belief, USACM was not financially obligated to Reale under  
7 the Reale Note.

8 14. USACM was insolvent on the date of the Transfer.

9 15. USACM (the "Debtor") filed for relief under Chapter 11 of the Bankruptcy Code  
10 on April 13, 2006 (the "Petition Date").

11 **FIRST CAUSE OF ACTION**

12 **(11 U.S.C. § 548(a)(1)(A))**

13 16. The Debtor repeats and reavers allegations 1 through 15 as if fully set forth herein.

14 17. The Transfer was of an interest of the Debtor in property.

15 18. The Transfer was made within two years of the Petition Date.

16 19. The Transfer was made with the intent to hinder, delay, or defraud entities to which  
17 the Debtor was or became indebted to on or after the date the Transfer was made.

18 **SECOND CAUSE OF ACTION**

19 **(11 U.S.C. § 548(a)(1)(B))**

20 20. The Debtor repeats and reavers allegations 1 through 19 as if fully set forth herein.

21 21. The Transfer was of an interest of the Debtor in property.

22 22. The Transfer was made within two years of the Petition Date.

23 23. The Debtor received less than a reasonably equivalent value in exchange for the  
24 Transfer because the Transfer was made to satisfy obligations not owed by the Debtor.

25 24. The Debtor was insolvent on the date the Transfer was made or became insolvent  
26 as a result of the Transfer.

27 25. As a result of the Transfer, the Debtor was engaged in business or a transaction or  
28 was about to engage in business or a transaction for which any property remaining with the Debtor

1 was unreasonably small capital.

2 26. As a result of the Transfer, the Debtor intended to incur or believed that it would  
3 incur debts that would be beyond its ability to pay as such debts matured.

4 **THIRD CAUSE OF ACTION**

5 **(11 U.S.C. § 544 and NRS 112.180(1)(a))**

6 27. The Debtor repeats and reavers allegations 1 through 26 as if fully set forth herein.

7 28. The Transfer was of an interest of the Debtor in property.

8 29. This claim is being made within four years of the date the Transfer was made.

9 30. The Debtor made the Transfer with the actual intent to hinder, delay, or defraud  
10 creditors of the Debtor.

11 **FOURTH CAUSE OF ACTION**

12 **(11 U.S.C. § 544 and NRS 112.180(1)(b))**

13 31. The Debtor repeats and reavers allegations 1 through 30 as if fully set forth herein.

14 32. The Transfer was of an interest of the Debtor in property.

15 33. This claim is being brought within four years of the date the Transfer was made.

16 34. The Debtor received less than a reasonably equivalent value in exchange for the  
17 Transfer because the Transfer was made to satisfy obligations not owed by the Debtor.

18 35. The Debtor was engaged or was about to engage in a business or a transaction for  
19 which the remaining assets of the Debtor were unreasonably small in relation to the business or  
20 the transaction.

21 36. The Debtor was engaged in business or a transaction or was about to engage in  
22 business or a transaction for which any property remaining with the Debtor was unreasonably  
23 small capital.

24 37. The Debtor intended to incur or believed or reasonably should have believed that  
25 he would incur, debts beyond his ability to pay as they became due.

26 **FIFTH CAUSE OF ACTION**

27 **(11 U.S.C. §§ 544, 548, and 550(a) and NRS 112.220)**

28 38. The Debtor repeats and reavers allegations 1 through 37 as if fully set forth herein.

39. The Transfer was made to Investment Partners, as an initial transferee.

40. Reale was the person for whose benefit the Transfer was made and was the immediate or subsequent transferee of Investment Partners.

41. The Transfer is avoidable under 11 U.S.C. §§ 544 and 548 and therefore, pursuant to § 550 and NRS 112.220, the Debtor may avoid and recover the Transfer from Reale.

WHEREFORE, USACM prays as follows:

- 1) For judgment in its favor and against Salvatore Reale in the sum of \$4,000,000.00 plus interest pursuant to 28 U.S.C. § 1961(a) and costs.
- 2) For such other relief that that this Court deems just and proper.

Dated: December 18, 2006

/s/ Jeanette E. McPherson

Lenard E. Schwartzter, Esq.

Jeanette E. McPherson, Esq.

Jason Imes, Esq.

Schwartzter & McPherson Law Firm

2850 South Jones Boulevard, Suite 1

Las Vegas, NV 89146

-and-

Annette Jarvis, Utah Bar No. 1649

Steven C. Strong, Utah Bar No. 6340

RAY QUINNEY & NEBEKER P.C.

36 South State Street, Suite 1400

P.O. Box 45385

Salt Lake City, Utah 84145-0385

Attorneys for USA Commercial Mortgage Company